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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1946.

EDGAR S. ALBRECHT and GERALDINE ALBRECHT, His Wife, and ALBERT W. ALBRECHT, JR., and VIRGINIA ALBRECHT, His Wife,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 148.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF PETITIONERS.

GEORGE EIGEL,
722 Chestnut Street,
St. Louis 1, Missouri,
Counsel for Petitioners Albert W. Albrecht, Jr., and Virginia Albrecht, His Wife.

WILLIAM L. IGOE,
RICHMOND C. COBURN,
1530 Boatmen's Bank Building,
St. Louis 2, Missouri,
Counsel for Petitioners Edgar S. Albrecht and Geraldine Albrecht, His Wife.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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BRIEF OF PETITIONERS.

This case is here on writ of certiorari issued by this Court on the 14th day of October, 1946, directed to the United States Circuit Court of Appeals for the Eighth Circuit to review the opinion and judgment of said Court in the case of United States of America, Appellant, v. Edgar S. Albrecht and Geraldine Albrecht, His Wife, and Albert W. Albrecht, Jr., and Virginia Albrecht, His Wife, Appellees, No. 13,223, Civil, in said Court of Appeals.

OPINION OF THE COURT BELOW.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit in the above mentioned case, No. 13,223, appears in the printed transcript filed herein

on pages 294-296, inclusive, and is now printed in 155 Fed. (2d) 77. The opinion of the Court of Appeals is a memorandum opinion based upon the opinion rendered by that Court in the case of Lola Castlio Oliver and A. Ray Oliver, Her Husband, and Mrs. B. I. Castlio (also known as B. Irene Castlio), Appellants, v. United States of America, Appellee, No. 13,174, Civil, in said Court of Appeals, which opinion appears in the printed transcript filed herein on pages 296-303, inclusive, and is now printed in 155 Fed. (2d) 73.

JURISDICTION OF THIS COURT.

The jurisdiction of this Court is invoked by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938 [28 U. S. C. A., Sec. 347 (a)].

The judgment of which review is sought was entered by the Circuit Court of Appeals for the Eighth Circuit on April 9, 1946 (R. pp. 303-304), but did not become final until April 30, 1946, when petitioners' (appellees') Petition for Rehearing was denied (R. p. 321).

An application to withhold a mandate of the said Court of Appeals for thirty days in order to permit petitioners to apply to this Court for writ of certiorari was sustained by the Court of Appeals by order entered on May 10, 1946 (R. pp. 350-351).

A duly certified copy of the Record, including all of the proceedings in this cause in the District Court of the United States and in said Court of Appeals, was filed herein together with the requisite number of copies thereof in compliance with the rules of this Court. The record in this cause is consolidated with the record in the three companion cases entitled and designated in the Court of Appeals as United States of America, Appellant, v. Q. W. S. S. Realty & Investment Company, Appellee, No. 13,226;

United States of America, Appellant, v. Edward J. Linnenbringer et al., Appellees, No. 13,227, and United States of America, Appellant, v. Dennis B. Pitman et al., Appellees, No. 13,228.

The constitutional provision involved herein is Amendment V to the Constitution of the United States which provides in part "* * * nor shall private property be taken for public use, without just compensation."

The statutory provision involved is 40 U. S. C. A., Sec. 258a, c. 307, Sec. 1, 46 Stat. 1421.

STATEMENT.

The petitioners were the owners of certain land located in St. Charles County, Missouri. On the 9th day of December, 1940, they signed a written offer designated an "Option to Purchase Land" to sell this land to the United States of America for the sum of $21,425 (R. pp. 27-29). This offer was accepted by the Government on the 17th day of December, 1940, (R. p. 29).

The Government assumed possession as it had a right to do under the contract and has remained in continuous possession ever since. But subsequently and on the 9th day of April, 1941, it repudiated its agreement and filed a condemnation proceeding against the petitioners in the United States District Court for the Eastern District of Missouri to acquire title to the land in that manner (R. pp. 8-15). This proceeding was in the usual form and was brought pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U. S. C. A., Sec. 257), and the Act of Congress approved July 2, 1917 (50 U. S. C. A., Sec. 171), as amended, which authorized the acquisition by the Secretary of War of land suitable and necessary for military purposes (R. pp. 9-15). On the same day the condemnor filed a Declaration of Taking which recited, among other things (R. pp. 15-18):

"1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U. S. C. A., Sec. 258a), * * * ."

Just compensation for the land taken was estimated therein to be $2,232.00 and that sum was deposited in the registry of the court (R. p. 18). Also on the same day an order was entered vesting the title to the land in question in the Government (R. pp. 18-20).

The landowners filed answers asserting that the parties to the proceeding had entered into a contract prior to the filing of the suit and requesting the court to fix the award in the condemnation proceedings at the amount mentioned in the contract, to-wit, $21,425.00, with interest thereon at six per cent (6%) per annum from the date of the acceptance of the contract, to-wit, December 17, 1940 (R. pp. 21-27).

No proceedings were had in this cause to fix the value of the property taken until this Honorable Court, in the companion cases of **Muschany v. United States** and **Andrews v. United States**, 324 U. S. 49, 65 S. Ct. 442, decided that the so-called Options to Purchase Land were valid and, in effect, fixed the amount of the award in each condemnation proceeding at the amount agreed upon in the Option to Purchase Land applicable to each such proceeding. Thereafter, and on the 30th day of March, 1945, the Government filed a motion requesting the court to enter a judgment condemning the property and fixing the landowners' compensation at the sum of $21,425.00 and directing the condemnor to pay into the registry of the court the deficiency of $19,193.00, but without allowing the landowners any interest (R. pp. 30-31). On the 2nd day of May, 1945, the petitioners filed an answer to the Government's motion requesting the court to enter a judgment condemning the land and fixing the compensation for

the taking of the land at $21,425.00 but praying the court to also award the petitioners interest at the rate of six per cent (6%) per annum upon said $21,425.00 from the date of taking on or about December 17, 1940, to the making of the deposit ($2,232.00) at the time of the filing of the Declaration of Taking on April 7, 1941, and with interest at the same rate on the deficiency of $19,193.00 from April 7, 1941, until the payment of said deficiency (R. pp. 32-34). On May 17, 1945, the Government paid into court the deficiency of $19,193.00 (R. p. 34).

Because of the large number of cases pending in the said United States District Court arising under the same circumstances and because of the widespread interest therein, all of the so-called Weldon Spring cases were submitted at the same time to a three-judge court consisting of the three United States District Judges sitting in the Eastern Judicial District of Missouri (R. p. 37), but each Judge ruled individually on each of said cases pending before him.* On June 29, 1945, the District Court, in the proceeding to condemn the land of the petitioners, entered a judgment condemning the land and fixing the compensation at the sum mentioned in the contract, to-wit, $21,425.00 plus interest in the sum of $4,727.87, being the equivalent of six per cent (6%) interest of the deficiency of $19,193.00 from the 9th day of April, 1941, to the 17th day of May, 1945 (R. pp. 38-43). Subsequently, the Government took an appeal in this cause to the United States Circuit Court of Appeals for the Eighth Circuit (R. p. 1). On April 9, 1946, said United States Circuit Court of Appeals filed its memorandum opinion (R. pp. 294-296) and entered a judgment in said

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*Judge Moore and Judge Duncan ruled that the landowners were entitled to interest in the cases pending before them. Judge Moore's opinion on the subject is reported at 61 F. Supp. 199. Judge Duncan filed a memorandum opinion (R. pp. 36, 37). Judge Hulen ruled that the landowners were not entitled to interest in an opinion reported at 60 F. Supp. 741. The instant case is one of several pending before Judge Duncan.

cause reversing the judgment of the District Court (R. pp. 303, 304). On the same day memorandum opinions were filed by said United States Circuit Court of Appeals in appeals from companion cases entitled and designated United States of America, appellant, v. Q. W. S. S. Realty & Investment Company, appellee, No. 13,226; United States of America, appellant, v. Edward J. Linnenbringer et al., appellees, No. 13,227, and United States of America, appellant, v. Dennis B. Pitman et al., appellees, No. 13,228. This appeal and the last mentioned appeals were decided upon the basis of the court's opinion entered the same day in the leading companion case entitled and designated Lola Castlio Oliver et al., appellants, v. United States of America, appellee, No. 13,174 (R. pp. 296-303). This court has granted certiorari in each of the last mentioned cases.

Thereafter, and on the 23rd day of April, 1946, and within the time allowed by the rules of the said United States Circuit Court of Appeals, the petitioners filed their Petition for Rehearing (R. p. 307). This petition was on the 30th day of April, 1946, denied by the said United States Circuit Court of Appeals, on which day said judgment of the said United States Circuit Court of Appeals in this cause became final (R. p. 321).

The duly certified record, including all the proceedings in this cause in said District Court and in said United States Circuit Court of Appeals, has been filed herein, together with the requisite number of printed copies thereof.

QUESTIONS PRESENTED.

The questions presented are:

1. Did the petitioners, as landowners, waive their right to interest from the date of taking to the date of payment by entering into the contract in question?

2. Were the petitioners, as landowners, denied their statutory rights by the failure to allow them interest from the date of taking to the date of payment of the award?

3. Were the petitioners, as landowners, denied just compensation guaranteed them by the Constitution of the United States by the failure to allow them such interest?

SPECIFICATIONS OF ERROR TO BE URGED.

The Circuit Court of Appeals erred:

1. In construing the contract as fixing the total amount to which petitioners, as landowners, were entitled because of the taking of their land.

2. In holding that the landowners by their successful defense of the contract in the condemnation proceeding thereby changed the nature of the proceedings so as to preclude recovery of interest for the period between the taking of the property and payment.

3. In refusing to allow interest against the Government for delay.

4. In refusing to recognize that a statute existed which required the Government to pay the landowners interest.

5. In refusing to hold that the Government was estopped to deny the landowners' right to interest.

6. In refusing to accord the landowners "just compensation" as required by the Constitution of the United States.

7. In distinguishing the opinion of the Fifth Circuit Court of Appeals in **United States v. Baugh**, 149 Fed. (2d) 190.

SUMMARY OF THE ARGUMENT AND ARGUMENT.

The facts and the legal questions in the companion case of A. Ray Oliver, Executor of the Estate of Lola Castlio Oliver, Deceased, A. Ray Oliver and B. Irene Castlio, Petitioners, v. United States of America, Respondent, being cause No. 151, October Term, 1946, in this Court, are identical with those presented in this case, the only difference being that in that case the District Court did not allow the landowners interest, whereas in this case the District Court allowed interest. To avoid duplication, therefore, the Summary of the Argument and the Argument contained in the Brief of the petitioners in that cause are adopted by the petitioners Edgar S. Albrecht et al. herein.

CONCLUSION.

It is respectfully urged that the judgment and record of the Court of Appeals for the Eighth Circuit in this case be quashed by this Court and that the judgment of the District Court holding that the landowners are entitled to the value of the land together with interest at the rate of six per cent (6%) per annum on the difference between that value and the amount paid in with the Declaration of Taking should be affirmed.

Respectfully submitted,

GEORGE EIGEL,
Counsel for Petitioners Albert W. Albrecht, Jr., and Virginia Albrecht, his wife.

WILLIAM L. IGOE,
RICHMOND C. COBURN,
Counsel for Petitioners Edgar S. Albrecht and Geraldine Albrecht, his wife.